

## **Jailed, released, jailed again, released... what next?**

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The formula of a series of arrests and releases, applied to former pro-reform fuel and energy Vice Prime Minister Yulia Tymoshenko has been one of key political intrigues of the recent months that have a good chance to add to the growing confrontation between the Ukrainian power establishment and the opposition.

The recent developments – release, a new arrest and a new release – were played by the judiciary and the Office of Attorney General at remarkably high speed within just a few days. Though, the emotions and tensions are high, they appear to be played in the local drama style. While everybody seems to have got accustomed to traditional uncertainty and lack of logic in the officials' political steps, the approach taken by the state agencies to deal with Yulia Tymoshenko raised many eyebrows even of «graduate» politicized Ukrainians.

On March 27 supporters and critics of leader of the Batkivshchyna party and one of the activists of the National Salvation Forum, Yulia Tymoshenko, were taken by surprise, pleasant or shocking, respectively, as she was released from pre-trial detention after Judge Mykola Zamkovenko of the Pechersky Borough Court, Kyiv, abolished the arrest warrant issued against her in February. The case had been reviewed by the court at the demand of Yulia Tymoshenko's lawyer since March 12. Having studied the materials presented to the court by the Office of Attorney General of Ukraine, Judge Zamkovenko concluded that there had been no good reasons to sanction the arrest of Tymoshenko. Hence, based on «international and Ukrainian legal norms», he satisfied Tymoshenko's lawyer's appeal. He also judged that Deputy Attorney General Mykola Obikhod, who had sanctioned the arrest, «should have found out whether a less severe preventive measure would have sufficed» (UNIAN, March 27, 2001). Also, according to the Judge, the Office of Attorney General failed to provide the court with sufficient proof of the claim that Yulia Tymoshenko was «deviating from the investigation or influencing it», or «was going to hide from the investigation» (UNIAN, March 27, 2001). Instead, he concluded, her publications in the media that had been presented to the court as evidence of alleged pressure on the investigation», were expression of her own opinion about the pending criminal case against her. Judge Zamkovenko also noticed that the Office of Attorney General had taken no notice of the appeal of 72 members of the Ukrainian parliament seeking to bail Tymoshenko out, nor any other guarantees she could have offered to the investigation agency. The judgement was pronounced unchallengeable and due to come into force immediately.

Yet, the Office of Attorney General retained to challenge the judgement through its oversight procedure – which it did the next evening. According to Obikhod, the protest was filed with the Presidium of the Kyiv City Court because of «groundlessness of that judgement» (UNIAN, March 28, 2001). He justified the position of the Office of Attorney General by the claim that «the Tymoshenko case is in process of investigation» and the charges against her «have not been dropped, on the contrary», every new day of investigation «is a proof of the changes made»; new facts have been disclosed and, «therefore, the truth in the case will be found and proved through trial, as the law demands» (UNIAN, March 28, 2001). Yet, in the evening of March 27 Yulia Tymoshenko was released from the Lukianovsky pre-trial detention «isolator» where she had spent almost 1.5 months.

Both President Leonid Kuchma and Prime Minister Victor Yushchenko commented on the event. Kuchma told the press: «I am not a judge, I am not a procuror, the judgement was made by the court and it should be fulfilled» (Ukraina Moloda, March 30, 2001). He also reminded he could not interfere with activities of the judiciary by law. Prime Minister Yushchenko announced he intended to meet Yulia Tymoshenko shortly, but at 22:15 in the evening of March 30 the Presidium of the Kyiv City Court annulled the judgement of the Pechersk Borough Court on the Tymoshenko case. She was re-arrested and escorted by the police to a private medical clinic, Medicom, as she complained of poor health condition. Information agencies did not miss the fact that «the session of the city court started immediately after the departure of the delegation of the Parliamentary Assembly of the Council of

Europe» (UNIAN, March 31, 2001). A few hours earlier the PACE representative Hanna Severinsen visited Yulia Tymoshenko at the hospital. According to information agencies, the Kyiv city court session lasted for less than an hour and was not attended by Tymoshenko's lawyers. The high pace of the developments of the case, logically, offered more questions than answers and suggest that the current political crisis in Ukraine may be heading towards its climax.

Yulia Tymoshenko is a rather controversial player of the Ukrainian political environment. As a Vice Prime Minister of Ukraine, she ran the country's fuel and energy complex for more than a year. Previous steps in the former business lady's political career included membership of two parliaments. Before that she had been Director General of the Dnipropetrovsk-based Ukrainsky Benzin corporation (1991-1995) and president of the major gas trading company, United Energy Systems of Ukraine (1995-1996). In December 1996 she was elected to the parliament of Ukraine for constituency #229 of the Kirovohrad region, gaining almost unprecedented strong support. Of 87.3% of eligible voters who came to the polling stations 91.1% voted for Tymoshenko.

In 1997-1999 was one of the leaders of the All-Ukrainian Association Hromada. She had led the part in July – September 1997, stepping down to let Pavlo Lazarenko to chair the party. In 1998, she was elected again as an MP for a different constituency of the Kirovohrad region, #99, having defeated 11 competitors and received 38.51% of the votes. Simultaneously, she was included in the Hromada election list as number 6. She was a member of the Hromada and its parliamentary faction till early 1999. When it became clear that the party leader Pavlo Lazarenko was out of favor with the top power-brokers of Ukraine, Tymoshenko and a number of her co-thinkers left the Hromada and started a new party, the Batkivshchyna. After a short while Tymoshenko was elected to lead the Batkivshchyna and its parliamentary faction. When appointed to the position of Vice Prime Minister, she left the parliament and, hence, lost the immunity to criminal prosecution, granted to MPs by Article 80 of the Constitution.

The year of 2001 brought substantial changes to Yulia Tymoshenko's political career. At the end of November 2000 Attorney General Mykhailo Potebenko announced the former president of the United Energy Systems of Ukraine Yulia Tymoshenko could be brought to trial on charges related to the company's suspected economic violations. According to Potebenko, criminal investigation can be started based on information from Russian law-enforcement authorities on results of searches of apartments owned by some officials of the Russian Defense Ministry. He intrigued journalists by claiming that «Yulia Volodymyrivna [Tymoshenko] does not know what has been found during the search. But what HAS been found!..» (Vysokyi Zamok, November 24, 2000). Tymoshenko denied the charges and linked «repression» against her and her family to her activities in the Yushchenko government. Commenting on Potebenko's statement, she argued that «the leadership of the Office of Attorney General treated me with practically an ultimatum that gets down to the following: either I stop reforms in the fuel and energy complex [and] resign, or a criminal case will be opened against me under any pretext. The response to this ultimatum is my statement about the next stage of reforms, aiming at overcoming corruption in the coal mining branch» (Vysokyi Zamok, November 24, 2000).

On November 29, 2000, it was publicly announced that «Vice Prime Minister of Ukraine Yulia Tymoshenko acts in a criminal case initiated by the Office of Attorney General of Russia against former Russian deputy minister of defense for logistics Vyacheslav Litvinov» as a person who had given the money to bribe the deputy minister of defense for logistics (Interfax-Ukraine, November 29, 2000). Tymoshenko was interrogated by Russian investigators into the case in early November. According to the Office of Attorney General, significant facts were confirmed by interrogation protocols and documents confiscated by the investigators. According to the press service, the relevant documents concerning Tymoshenko would be delivered to Ukraine only after the Russian court issues its judgement, and after that the Office of Attorney General of Ukraine would «give the legal evaluation» of the [former] Vice Prime Minister and make its decision whether to initiate a criminal case against her or not.

At that time, new charges were made against Yulia Tymoshenko's husband, Oleksandr. Member of the board of the United Energy Systems of Ukraine Oleksandr Tymoshenko, arrested by the Office of Attorney General in mid-2000 on charges of gross embezzlement, was also charged with giving a US\$ 4.6-million bribe to then Prime Minister of Ukraine Pavlo Lazarenko. According to the Office of Attorney General, «on November 6 the Office of Attorney General opened a criminal case against P. Lazarenko for gross bribes [paid for] assisting activities of the corporation of the United Energy

Systems of Ukraine from member of the board of the corporation O. Tymoshenko» (Den, November 8, 2000).

The intrigue developed rapidly. In early 2001 Yulia Tymoshenko was summoned to the Office of Attorney General for interrogation twice, and on January 16 Mykhailo Potebenko presented President Kuchma with a resolution on dismissing Tymoshenko from her position. A criminal case against Tymoshenko was initiated on January 15. She was charged with crimes specified in Articles 17, 70 and 172 of the Criminal Code of Ukraine – smuggling, attempted smuggling and fraud. Commenting on the resolution and actions of the Office of Attorney General, Tymoshenko announced that if President of Ukraine Leonid Kuchma conforms to the recommendation of Attorney General Mykhailo Potebenko about dismissing her from her position, that would mean that «shadow circles of Ukraine» had succeeded in pushing for her removal from the government (Uriadovyi Kurrier, January 19, 2001). «This investigation cannot be influenced at all, because it has been ordered,» then Vice Prime Minister argued, «and as any order it lives and exists according to other rules that are not related to the legislation».

The machine acted logically. Under the law, it is the head of the state who makes decisions about dismissing officials appointed by his decree. It took President Kuchma three days to fulfil the demand of the Office of Attorney General. Little is known about how the relevant decision was made by Prime Minister Victor Yushchenko, who did not sign the order to dismiss Tymoshenko for a few days.

Hence, Tymoshenko was dismissed with unprecedented formulation: «due to being brought to criminal liability», based on the resolution of the Office of Attorney General of January 15, 2001. According to the resolution, while occupying the position of Vice Prime Minister of Ukraine for the Fuel and Energy Complex, Yulia Tymoshenko could use her position to exert negative influence on the initial investigation launched pursuant to the initiation of the criminal case against her. She was allowed to stay free but restricted in her movements. Ironically, the day Tymoshenko was fired was the day when the government adopted the program of reforming the coal mining branch, prepared by a team led by Tymoshenko. Later on, she was quoted as saying that she very much regretted to «get her hands on the mining branch» as she had wanted to (Holos Ukrainy, March 23, 2001). Hence, her dismissal could have been seen as a contribution to the argument about the «oligarchy» factor of Ukraine's political reality. Similarly, it could also serve as support of the claim about «Moscow's hand» in the matter. Tymoshenko was dismissed from her position in the period of situational warming of the Ukrainian-Russian relations demonstrated by a number of visits of high-ranking Russian officials to Kyiv. As Vice Prime Minister, Yulia Tymoshenko spoke strongly against the restoration of parallel operation of the Ukrainian and Russian energy distribution system, and argued that though working parallelly with the Russian energy system would make the Ukrainian one more reliable and effective, the proposed arrangements had obvious drawbacks that could not be ignored. According to Tymoshenko, Russia was interested not in the parallel system as such, but «in certain flows of Russian electricity on the territory of Ukraine» (Ukraina Moloda, January 19, 2001). Later on, during Vladimir Putin's visit to Dnipropetrovsk in February 2001, he and his Ukrainian counterpart agreed on merging their countries' electric energy systems, and Ukrainian Fuel and Energy Minister Serhiy Yermilov and chairman of the board of the Russian United Energy Systems (UES RJSC) Anatoly Chubais signed a memorandum declaring the intention to work towards restoring parallel operation of the two countries' electric energy systems. One of the goals identified by the document was transportation of electricity through the Ukrainian territory.

Shortly afterwards, after joining the National Salvation Forum, Yulia Tymoshenko was arrested on February 13, 2001. A few days later the Ukrainian opposition publicly protested against the arrest. Commenting on the developments, chairman of the parliamentary committee for fighting organized crime and corruption Yuri Karmazin argued that the arrest resulted from «agreements between Leonid Kuchma and Vladimir Putin» (Ukraina Moloda, February 15, 2001). Before the arrest, commenting on her dismissal, Yulia Tymoshenko announced: «I was not dismissed by the President...<...> the President signed the decree, but his hand was moved by oligarchs» (Holos Ukrainy, January 23, 2001).

In addition to the possible geopolitical context of Yulia Tymoshenko's dismissal, the developments of the «tapegate» suggested that her arrest was linked to the domestic opposition context. Meanwhile, new accusations were made. The State Taxation Administration officially claimed that in 1996, when Yulia Tymoshenko led the United Energy Systems of Ukraine, the company illegally transferred about US\$ 1 billion abroad with the help of the Slovyansky Bank (Molod Ukrainy, February 6, 2001). The claims

were not left unnoticed: Yulia Tymoshenko told the press that «my political opponents with criminal souls have tried yet again to accuse me of terrible crimes. Frankly speaking, that slip of paper from the State Taxation Administration that presents sick (STA head) Azarov's phantasm does not require any comments for professionals» (Ukraina Moloda, February 6, 2001). She also added she was «prepared for anything».

Political processes unfolded simultaneously with the «war of charges and statements». The street actions under the slogans of «Ukraine without Kuchma» were extended to the parliament as the «Public Initiative of the National Salvation Forum». The foundation meeting of the Forum was held on February 9, 2001 and brought together several members of the parliament and other well-known Ukrainian politicians. The foundation meeting nominated and approved the 15-strong Coordination Council that included leader of the Socialist party Oleksandr Moroz, MP; Serhiy Holovaty, MP; leader of the Sobor party Anatoly Matvienko, MP; mayor of Cherkassy Volodymyr Oliynyk; leaders of the Batkivshchyna party Yulia Tymoshenko and Oleksandr Turchynov, MP; member of the Rukh (Udovenko) and a new recruit of the Reformy-Kongress parliamentary faction Taras Chornovil, MP; Volodymyr Chemerys, and leader of the Ukrainian Conservative Republican party Stepan Khmara. On February 9, 2001, the *Ukrainska Pravda* quoted the Forum members as declaring their intention to «unite about 70 prominent Ukrainian opposition politicians». Though short of most of the target group, the Forum announced itself as established, and Yulia Tymoshenko was believed to play a leading role in its institutionalization. However, a few days later the «Jeanne d'Arc» of Ukrainian politics was arrested – which, in fact, added to the Forum's cause and her own carefully architected image of a «martyr» suffering in her struggle against the «criminal» regime. The opposition condemned the authorities, describing the arrest as a «unwise step that ruins the foundations of civic peace in Ukraine» (Ukraina Moloda, February 15, 2001). Serhiy Holovaty, MP, argued that the arrest of Tymoshenko would only strengthen the opposition to the current power-holders. Another opposition activist, Anatoly Matvienko, described the arrest as a blunt manifestation of cynicism, arguing that when Leonid Kuchma had hired Tymoshenko to the position of Vice Prime Minister, he had been perfectly aware of the issues related to her former activities as the UESU leader. In his opinion, the President wanted to use those accusation to make Tymoshenko «an obedient, tamed vice premier who could be kept on short leash» (Ukraina Moloda, February 15, 2001).

The release of Tymoshenko on February 27 was viewed by her opposition colleagues as a judiciary, and not a political act. However, the too rapid abolition of the judgement of the Pechersky Borough Court by the Presidium of the Kyiv City Court late at night on March 30 served as a strong argument in favor of regarding the case as a political one. Which, naturally, raises new questions about the status of the judiciary branch in Ukraine. The conflict promises to last, as, according to Yulia Tymoshenko's co-thinker and co-leader of the Batkivshchyna Oleksandr Turchynov, she is going to work on a serious constructive program of action for the opposition and work towards strengthening the opposition. Lately, analysts and observers have described Yulia Tymoshenko as a possible leader of a united opposition who will have enough credibility and authority to represent the opposition at expected negotiations with the establishment. This point may be reinforced by the fact that on March 29 Prime Minister Yushchenko publicly announced he wished to meet with Tymoshenko and discuss ways of overcoming the current social conflicts with her. «We will meet, discuss, and work on how to overcome such conflicts,» he said (UT-1, March 29, 2001). Yulia Tymoshenko was re-arrested at the very beginning of a complicated and controversial start of informal talks between the authorities and the opposition, thus, enhancing the risk that the crisis may deteriorate. The developments show departure from the logic of compromise that makes any political agreements problematic. It does not appear that the Ukrainian power-holders have learnt the lessons of the crisis.

P.S. On April 2 the Interfax-Ukraine reported that Yulia Tymoshenko's lawyer, Victor Shvets appealed to the Supreme Court of Ukraine, protesting against the judgement of the Presidium of the Kyiv City Court. The Supreme Court suspended the judgement that had abolished the local court's judgement to order the release of Tymoshenko.

Commenting on the developments, presidential chief of staff Volodymyr Lytvyn urged politicians and observers «not to politicize» the judgement of the Presidium of the Kyiv City Court, but admitted it «unquestionably damaged» Ukraine's international image.

Meanwhile, Yulia Tymoshenko is determined to fight. She announced she would not leave Ukraine as matter of principle, but would be a member of the opposition fighting against Leonid Kuchma in order

to make him resign as a result of a national referendum. Recently the Ukrainian power establishment has given Tymoshenko yet another lesson: fighting remains probably the only solution for her under the circumstances, at least to ensure that the regime does not settle scores with her secretly. Yet, lawyers believe that if the Criminal Case Collegium endorses the judgement of the Supreme Court, the Office of Attorney General might appeal to the Supreme Court's Plenary or issue a new arrest warrant based on new charges – and the whole thing may start anew.